

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MUSHROOM EXPRESS, INC.,

Plaintiff,

v.

PENSKE TRUCK LEASING CO., LP,

Defendant.

AND RELATED COUNTERCLAIM.

CASE NO. 13cv2622 JM(NLS)

ORDER DENYING MOTION FOR
CLARIFICATION

Defendant and Counter-Claimant Penske Truck Leasing Co., LP (“Penske”) moves to clarify the court’s January 7, 2015 Order granting in part and denying in part Penske’s motion for summary judgment (“Order”). Plaintiff and Counter-Defendant Mushroom Express, Inc. (“Mushroom”) opposes the motion.

The court treats Penske’s motion for clarification as one for reconsideration. Reconsideration is generally appropriate “if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law. . . . There may also be other, highly unusual circumstances warranting reconsideration.” School Dist. No. 1J, Multnomah County, Oregon v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993) (citations omitted). As Penske fails to identify any newly discovered evidence, clear error, or an intervening change in controlling law, the court denies the motion for

1 reconsideration.

2 With respect to Sections 16 and 18 of the Vehicle Lease Service Agreement
3 (“Agreement”), Penske sought partial summary judgment based upon these provisions.


4 These provisions are clear that: (1) Mushroom Express would assume the
5 risk of loss or damage to any cargo during transit, and (2) that Mushroom
6 Express could not recover lost profits, damages attributable to a delay
with delivery, or any indirect, special or consequential damages.

7 (Ct. Dkt. 21-1, Motion at p.19:8-11). In its Order, the court concluded that Penske has
8 no liability for loss or damage to the cargo or loss of profits caused by the delay.
9 Mushroom has a very limited damages remedy under the Agreement. The Order
10 concluded that genuine issues of material fact prevented entry of summary judgment
11 on two limited breach of contract claims arising out of Penske’s specific contract
12 representations that it would (1) maintain the truck in good operating condition and (2)
13 replace the disabled vehicle with a working similar vehicle within a reasonable period
14 of time. (Order at pp. 5:15-7:26). While these claims survived summary judgment, the
15 amount of available damages for these two claims is limited, but not eliminated, by
16 Sections 16 and 18 of the Agreement (i.e. Mushroom’s damages do not include
17 damages to the cargo or lost profits).

18 In sum, the motion for reconsideration is denied.

19 **IT IS SO ORDERED.**

20 DATED: April 22, 2015

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22 Hon. Jeffrey T. Miller
United States District Judge

23 cc: All parties
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